

99TH CONGRESS
2D SESSION

S. 2604

To amend the Social Security Act with respect to the standards for participation of skilled nursing facilities and intermediate care facilities under the medicare and medicaid programs, to amend the Older Americans Act of 1965 with respect to the ombudsman program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 26 (legislative day JUNE 23), 1986

Mr. HEINZ (for himself and Mr. GLENN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Social Security Act with respect to the standards for participation of skilled nursing facilities and intermediate care facilities under the medicare and medicaid programs, to amend the Older Americans Act of 1965 with respect to the ombudsman program, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Nursing Home Quality
5 Reform Act of 1986”.

1 **TITLE I—MEDICARE AND MEDICAID**
2 **PROGRAMS**

3 **SEC. 101. REQUIRING MEDICAID INTERMEDIATE CARE FACILI-**
4 **TIES TO MEET MEDICARE SKILLED NURSING**
5 **FACILITY REQUIREMENTS.**

6 (a) **IN GENERAL.**—The first sentence of section 1905(c)
7 of the Social Security Act (42 U.S.C. 1396d(c)) is amended
8 by striking “which (1)” and and inserting in lieu thereof
9 “which meets the requirements of section 1861(j) for a skilled
10 nursing facility, except that with respect to an institution for
11 mental diseases such term means an institution which (1)”.

12 (b) **EFFECTIVE DATE.**—The amendment made by sub-
13 section (a) shall apply to intermediate care facility services
14 furnished on or after September 30, 1987.

15 **SEC. 102. CHANGES IN CONDITIONS OF PARTICIPATION.**

16 (a) **IN GENERAL.**—Section 1861(j) of the Social Securi-
17 ty Act (42 U.S.C. 1395x(j)) is amended—

18 (1) by striking paragraph (2) and inserting in lieu
19 thereof the following:

20 “(2) provides for the establishment, adherence to,
21 and periodic review of adequate policies and procedures
22 for the management of the facility, which assure that—

23 “(A) an overall plan and budget that meets
24 the requirements of subsection (z) is in effect,

1 “(B) all nurse aides or nurse assistants pro-
2 viding direct patient care have completed a State-
3 approved training program in a State-accredited
4 institution,

5 “(C) except as required by a State case man-
6 agement or preadmission screening program, no
7 different standards are applied to the admission,
8 transfer, discharge, and service on the basis of
9 any patient’s source of payment,

10 “(D) all employees providing direct patient
11 care have cleared an appropriate criminal back-
12 ground check,

13 “(E) patients regularly participate in deci-
14 sionmaking in the facility’s operations and have a
15 mechanism for the presentation of patient con-
16 cerns, and

17 “(F) representatives of the State office of
18 long-term care ombudsman (established under sec-
19 tion 307(a)(12) of the Older Americans Act of
20 1965) have access to the facility and its residents,
21 and, with the permission of a patient or patient’s
22 legal guardian, have access to review the patient’s
23 medical and social records;”;

24 (2) by striking paragraph (5) and inserting in lieu
25 thereof the following:

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1 “(5)(A) maintains clinical records on all patients,
2 and

3 “(B) provides for accurate assessments of each
4 patient—

5 “(i) that are performed—

6 “(I) upon admission, periodically, and
7 whenever there is a change in patient status,
8 and

9 “(II) by a professional registered nurse
10 who has received appropriate training for
11 this purpose, and

12 “(ii) the results of which are recorded and
13 maintained in a standard format in the clinical
14 records of the patient;”;

15 (3) by striking paragraphs (8) and (10);

16 (4) by redesignating paragraphs (9), (11), and (12)
17 as paragraphs (8), (9), and (10), respectively;

18 (5) by redesignating paragraphs (13), (14), and
19 (15), as paragraphs (17), (18), and (19), respectively;

20 (6) by inserting after paragraph (10) and before
21 paragraph (17), as so redesignated, the following new
22 paragraphs:

23 “(11) cares for patients in such a manner and in
24 such an environment as will promote maintenance or
25 enhancement of the patient’s quality of life, including—

“(A) providing a supportive, comfortable, homelike environment in which patients have a choice over their surroundings, schedules, health care, and activities,

“(B) treating patients with dignity and respect, and

“(C) affording patients opportunities to interact with others in and outside the facility;

“(12) assures that each patient regularly receives high quality care to meet individual physical, mental, and psychosocial needs which is designed to maintain or improve each patient’s mental and emotional well-being;

“(13) assures the protection of each patient’s civil and legal rights, including (but not limited to) the right—

“(A) to be fully informed, as evidenced by the patient’s written acknowledgment, before or at the time of admission and during his or her stay, of these rights and of all rules and regulations governing patient conduct and responsibility;

“(B) to be fully informed, and given a written statement before or at the time of admission and during his or her stay, of services available in the facility and of related charges for such serv-

1 ices, including any charges for services not cov-
2 ered under this title or under a State plan ap-
3 proved under title XIX, or not covered by the fa-
4 cility's basic per diem rate;

5 “(C) to be informed in writing at least 30
6 days in advance of any changes in the availability
7 of services or in the charges for these services;

8 “(D) to nondiscrimination on the basis of the
9 patient's source of payment or disability;

10 “(E) to be fully informed by a physician of
11 his or her medical condition, unless medically con-
12 traindicated for a specified and limited period of
13 time (as documented, by a physician, in the pa-
14 tient's medical record), and to be afforded the op-
15 portunity to participate in the planning of his or
16 her medical treatment;

17 “(F) the right to inspect freely his or her
18 medical and social records upon request to the
19 facility;

20 “(G) to receive prior notice—

21 “(i) at least 3 days before an intrafacil-
22 ity transfer of the patient,

23 “(ii) at least 3 days before lapse of bed-
24 hold days for the patient, and

1 “(iii) at least 20 days before the pa-
2 tient’s discharge from the facility;

3 “(H) to receive sufficient preparation and ori-
4 entation to ensure safe and orderly transfer or dis-
5 charge from the facility and to have this prepara-
6 tion and orientation documented in the patient’s
7 medical record;

8 “(I) to appeal transfers and discharges to a
9 State hearing officer before they occur;

10 “(J) to full access to a representative of the
11 State office of long-term care ombudsman (estab-
12 lished under section 307(a)(12) of the Older
13 Americans Act of 1965);

14 “(K) to be assisted, throughout his or her
15 stay, in the exercise of his or her rights as a pa-
16 tient and as a citizen, and to this end his or her
17 right to file complaints under this section, voice
18 grievances, and recommend changes in policies
19 and service to the staff of the facility and to out-
20 side representatives of his or her choice (including
21 long-term care ombudsmen and representatives of
22 governmental agencies administering the pro-
23 grams under this title and title XIX) free from re-
24 straint, interference, coercion, discrimination, or
25 reprisal;

1 “(L) to organize, maintain, and participate in
2 resident advisory and family councils, the meet-
3 ings of which shall be afforded privacy and facility
4 space;

5 “(M) to manage his or her personal financial
6 affairs or be given, at least quarterly, an itemized
7 accounting of financial transactions made on his
8 or her behalf whenever the facility accepts his or
9 her written delegation of this responsibility for
10 any period of time in conformance with State law;

11 “(N) to a clean and safe living environment;

12 “(O) to be free from mental and physical
13 abuse;

14 “(P) to be free from chemical and physical
15 restraints, except—

16 “(i) as authorized in writing by a physi-
17 cian for a specified and limited period of
18 time, or

19 “(ii) in emergencies when necessary to
20 protect the patient from injury to himself or
21 herself or to others (in which case notice of
22 the use of such restraints, and an explanation
23 of the circumstances thereof, shall be
24 promptly provided to the attending physician
25 and noted in the patient’s medical record);

1 “(Q) to meet with visitors from inside and
2 outside the facility during at least 12 hours of
3 each day;

4 “(R) to associate and communicate privately
5 with persons of the patient’s choice;

6 “(S) to send and receive mail unopened;

7 “(T) to be treated with dignity and respect
8 by the staff of the facility;

9 “(U) to be free from forced labor or experi-
10 mentation of any type;

11 “(V) to be assured confidential treatment of
12 his personal and medical records;

13 “(W) to approve or refuse the release of such
14 records to any individual outside the facility,
15 except in the case of a transfer to another health
16 care institution or as required by law or third-
17 party payment contract;

18 “(X) to maintain personal clothing and pos-
19 sessions as space permits and to be provided secu-
20 rity in storing possessions;

21 “(Y) to participate freely in social, religious,
22 and community activities; and

23 “(Z) if the patient is married, to private
24 visits from his or her spouse and to share a room
25 if both are patients in the facility;

1 “(14) assures that no retaliation or reprisal is
2 made with respect to any patient or employee by
3 reason of his or her filing of a complaint with the State
4 office of long-term care ombudsman (established under
5 section 307(a)(12) of the Older Americans Act of
6 1965), the State survey agency, or the Secretary with
7 respect to the quality of care, environment, or services
8 provided by the facility;

9 “(15) makes information with respect to its poli-
10 cies and procedures regarding the rights of patients
11 available to the public, patients, and guardians and rel-
12 atives of patients, and to any relative or other person
13 serving as a representative payee of a patient pursuant
14 to section 205(j) of this Act; and

15 “(16) trains and involves the staff of the facility in
16 the implementation of such policies and procedures.”;
17 and

18 (7) by adding at the end thereof the following:

19 “The assessments required by paragraph (5)(B) shall in-
20 clude (but not be limited to) the identification of medical prob-
21 lems, the measurement of physical functioning (such as mo-
22 bility and the ability to conduct daily activities), and the
23 measurement of mental and psychosocial functioning.

24 “For purposes of paragraph (14), any action that is
25 taken by a representative of a facility within 120 days of the

1 filing of a complaint described in such paragraph by a patient
2 of employee and that has an adverse effect upon the patient
3 or employee shall raise a rebuttable presumption that the
4 action was taken in retaliation or reprisal for the filing of the
5 complaint. Unless such presumption is successfully rebutted
6 (as determined by the Secretary), the Secretary shall impose
7 and collect (by withholding from amounts otherwise payable
8 to the facility under this title or by any other method deemed
9 appropriate by the Secretary) a civil penalty of not less than
10 \$1,000 and not more than \$10,000 for each retaliation or
11 reprisal.

12 “In the case of a patient adjudicated incompetent in ac-
13 cordance with State law, the rights set forth in paragraph
14 (13) shall devolve upon the person to whom the patient
15 (before being rendered incompetent) has assigned a durable
16 power of attorney, or, in the absence of an effective durable
17 power of attorney, to the patient’s guardian, next of kin, or
18 relative or other person (other than the facility) serving as
19 representative payee under section 205(j)(1). In the case of a
20 patient who has been rendered (but not adjudicated) incompe-
21 tent, such rights shall devolve upon the person to whom the
22 patient (before being rendered incompetent) has assigned a
23 durable power of attorney.”.

1 (b) CONFORMING AMENDMENTS.—(1) Section 1905(c)
2 of such Act is amended by striking “1861(j)(14)” and insert-
3 ing in lieu thereof “1861(j)(18)”.

4 (2) Sections 1863 and 1883(f) of such Act are each
5 amended by striking “1861(j)(15)” and inserting in lieu
6 thereof “1861(j)(19)”.

7 SEC. 103. CHANGES IN CERTIFICATION PROGRAM AND
8 PROCESS.

9 (a) SEPARATING SURVEYS AND CONSULTATIVE SERV-
10 ICES.—Section 1864(a) of the Social Security Act (42
11 U.S.C. 1395aa(a)) is amended by inserting before the period
12 at the end of the fourth sentence the following: “and such
13 consultative services shall be separate from the survey proc-
14 ess and shall not be performed by those individuals conduct-
15 ing the survey”.

16 (b) POSTING SURVEY RESULTS.—Such section is fur-
17 ther amended by inserting, after “readily available form and
18 place” in the fifth sentence, the following: “, and require (in
19 the case of skilled nursing facilities) the posting in a place
20 readily accessible to patients (and patients’ representa-
21 tives),”.

22 (c) DISCLOSURE OF INSPECTION REPORTS.—Section
23 1106(e) of such Act (42 U.S.C. 1306(e)) is amended—

24 (1) by striking “60” the first place it appears and
25 inserting in lieu thereof “30”,

1 (2) by striking “report; nor” and inserting in lieu
2 thereof “report. Nor”,

3 (3) by striking “(e) No report” and inserting in
4 lieu thereof “(e)(1) Except as provided in paragraph
5 (2), no”, and

6 (4) by adding at the end thereof the following new
7 paragraph:

8 “(2) Notwithstanding the first sentence of para-
9 graph (1), the Secretary may release a report described
10 in subsection (d) to a State long-term care ombudsman
11 (established under section 307(a)(12) of the Older
12 Americans Act of 1965) or a designee before the end
13 of the 30-day period described in such sentence.”.

14 (d) DETERMINATION OF SKILLED NURSING FACILITY
15 COMPLIANCE.—(1) Section 1864 of such Act is further
16 amended by adding at the end the following new subsections:

17 “(d) Any agreement under subsection (a) entered into by
18 the Secretary to determine whether an institution is in com-
19 pliance with the conditions of participation applicable to a
20 skilled nursing facility shall include the following provisions:

21 “(1) Certification surveys conducted with respect
22 to a facility—

23 “(A) shall not be announced in advance,

24 “(B) shall be conducted by a multidisciplinary
25 team of professionals (including at least a

1 registered professional nurse, a registered dieti-
2 cian, and a registered sanitarian) who have passed
3 a standardized, State-administered competency
4 examination approved by the Secretary,

5 “(C) shall focus on the quality of care pro-
6 vided to patients,

7 “(D) shall include a private meeting between
8 patients and survey personnel to discuss patients’
9 experiences within the facility with respect to pa-
10 tients’ rights and compliance with the standards
11 applicable to the facility under this title,

12 “(E) shall be conducted, with respect to each
13 facility and except as provided in subparagraph
14 (F), between 9 and 15 months after the previous
15 survey for the facility, with such surveys being
16 conducted, on a Statewide average, 12 months
17 apart, and

18 “(F) may be conducted less often than annu-
19 ally with respect to a facility only if the facility is
20 fully in compliance with each of the minimum
21 standards established by the Secretary under sec-
22 tion 1861(j).

23 “(2) The State shall provide comprehensive initial
24 and continuing training for the professionals described

1 in paragraph (1)(B), including at least 40 hours of con-
2 tinuing training each year.

3 “(3) In addition to surveys described in paragraph
4 (1), the State shall provide for an abbreviated survey of
5 a facility within 45 days after a change in ownership of
6 the facility, a change in the facility’s administrator, or
7 a change in the facility’s director of nursing.

8 “(4) The State agency responsible under the
9 agreement must maintain and utilize a specialized
10 survey team for the purpose of identifying, surveying,
11 gathering and preserving evidence, and carrying out
12 any enforcement action against chronically substandard
13 facilities and any other facility that poses an immediate
14 threat to the health, safety, or well-being of its pa-
15 tients. Such a team shall include (or have prompt
16 access to) an attorney, physician, registered profession-
17 al nurse, investigator, and other health professionals
18 and shall be available for providing enforcement train-
19 ing and technical assistance to regular survey staff of
20 the State.

21 “(5) In accordance with specific procedures devel-
22 oped by the Secretary, the State agency shall provide
23 for investigation of complaints respecting skilled nurs-
24 ing facilities.

1 “(e) Notwithstanding any other provision of this section,
2 no agreement under this section shall apply with respect to
3 determining whether an institution owned by a State is in
4 compliance with the conditions of participation applicable to a
5 skilled nursing facility. Such determination shall be made, for
6 purposes of this title and title XIX, by the Secretary.

7 “(f) The Secretary shall develop and implement criteria
8 and procedures for the evaluation of plans of correction sub-
9 mitted by institutions seeking compliance with the standards
10 for skilled nursing facilities. Such criteria and procedures
11 shall be designed—

12 “(1) to maximize specificity in the plans,

13 “(2) to require on-site evaluation of the implemen-
14 tation of plans dealing with deficiencies relating to pa-
15 tient care, and

16 “(3) to emphasize the need for correction to pro-
17 vide for permanent compliance with the standards.

18 “Any institution that fails to submit an acceptable plan of
19 correction shall be subject to sanctions under section
20 1866(f)(4).”.

21 (e) REIMBURSEMENT OF STATES FOR SURVEY
22 COSTS.—Subsection (b) of section 1864 of such Act is
23 amended by adding at the end the following new sentence:
24 “Payments under this subsection shall include full reimburse-

1 ment for any State expenditures associated with carrying out
2 subsection (d).”.

3 (f) EXERCISE OF MEDICAID LOOK-BEHIND AUTHOR-
4 ITY.—Section 1902(a)(33)(B) of such Act (42 U.S.C.
5 1396a(a)(33)(B)) is amended by striking the comma after
6 “except that” and inserting in lieu thereof the following: “(i)
7 the Secretary shall annually validate State determinations re-
8 garding a random sample of 5 percent of skilled nursing and
9 intermediate care facilities, and (ii)”.

10 SEC. 104. INTERMEDIATE SANCTIONS; RECEIVERSHIP
11 AUTHORITY.

12 (a) MEDICARE PROGRAM.—

13 (1) Section 1866(f) of the Social Security Act (42
14 U.S.C. 1395cc(f)) is amended—

15 (A) by striking “health and safety” each
16 place it appears and inserting in lieu thereof
17 “health, safety, and well-being”, and

18 (B) by adding at the end the following new para-
19 graphs:

20 “(4) The Secretary shall develop and implement a range
21 of intermediate sanctions to apply to facilities which have
22 been determined to meet the conditions described in (1)(B).
23 Such sanctions shall include (at a minimum) civil fines and
24 penalties and suspension of vendor payments. The Secretary
25 shall develop and implement specific criteria as to when and

1 how each of these intermediate sanctions is to be applied, the
2 amounts of any fines, and the severity of each of these penal-
3 ties. These criteria shall be designed so as to minimize the
4 time between identification of violations and final imposition
5 of these sanctions and shall provide for the imposition of in-
6 crementally more severe fines for repeated or uncorrected de-
7 ficiencies. In accordance with such criteria, the Secretary
8 may impose any such sanction in lieu of, or in addition to,
9 imposing the sanction otherwise provided under paragraph
10 (1).

11 “(5) In addition to any other action which the Secretary
12 may take pursuant to this title, the Secretary may fine such
13 facility \$50 per day for any day on which such facility does
14 not substantially meet the requirements of section 1861(j) or
15 of the provider agreement.

16 “(6) For purposes of reimbursement under this title and
17 any State plan approved under title XIX, any amount paid
18 by a facility under paragraph (4) or (5) shall not be taken into
19 consideration as a cost incurred by the facility.

20 “(7)(A) In any case where the Secretary determines
21 that a skilled nursing facility is chronically failing to meet
22 substantially the requirements of section 1861(j) or of the
23 provider agreement, or determines that the facility’s deficien-
24 cies immediately jeopardize the health and safety of its
25 patients—

1 “(i) the Secretary shall give public notice of such
2 determination, and

3 “(ii) in the case of a skilled nursing facility that is
4 not in a period of State-ordered receivership (as defined
5 in subparagraph (C)), the Secretary may appoint a re-
6 ceiver to—

7 “(I) oversee the operation of the facility;

8 “(II) establish and oversee the implementa-
9 tion of a correction plan to bring the facility into
10 compliance with the applicable requirements of
11 the State plan, this title, title XIX, and State li-
12 censing requirements by a date set forth in the
13 correction plan; and

14 “(III) assure the health and safety of the fa-
15 cility’s patients during the receivership period.

16 “(B) Subject to paragraph (1), payment shall be made
17 under this title with respect to any services furnished by any
18 such facility to patients who remain in such facility during
19 any period of receivership ordered by the Secretary or the
20 State with respect to such facility.

21 “(C) For purposes of this paragraph, a period of State-
22 ordered receivership with respect to a facility is a period
23 during which—

24 “(i) the State has appointed a receiver to oversee
25 the operation of the facility;

1 “(ii) the State has in effect a correction plan to
 2 bring the facility into compliance with the applicable
 3 requirements of the State plan, this title, title XIX,
 4 and State licensing requirements by a date set forth in
 5 the correction plan; and

6 “(iii) the State has taken measures to assure the
 7 health and safety of the facility’s patients during the
 8 period.

9 “(D) Public notice shall also be given in any case in
 10 which such deficiencies are determined to be rectified.

11 (2) APPEAL RIGHTS.—Paragraph (2) of section
 12 1869(f) of such Act is amended to read as follows:

13 “(2) Each facility which is aggrieved by a determination
 14 under paragraph (1) is entitled to notice and opportunity for a
 15 hearing with respect to the determination. Such hearing shall
 16 not occur until after the determination has been imple-
 17 mented.”.

18 (b) MEDICAID PROGRAM.—

19 (1) Section 1902(i) of such Act is amended by
 20 adding at the end thereof the following new para-
 21 graphs:

22 “(4) In addition to any other action which the State or
 23 the Secretary may take pursuant to this title, the Secretary
 24 may fine a facility \$50 per day for any day on which such
 25 facility does not substantially meet the requirements of sec-

1 tion 1861(j) or 1905(c) or other requirements of the State
2 plan.

3 “(5)(A) In any case where the Secretary determines
4 that a skilled nursing facility or intermediate care facility is
5 chronically failing to substantially meet the provisions of sec-
6 tion 1861(j) or 1905(c) or other requirements of the State
7 plan, or determines that the facility’s deficiencies immediately
8 jeopardize the health and safety of its patients—

9 “(i) the Secretary shall give public notice of such
10 determination, and

11 “(ii) in the case of a facility that is not in a period
12 of State-ordered receivership, may, in lieu of decertify-
13 ing the facility, appoint a receiver (as described in sec-
14 tion 1866(f)(7)) with respect to such facility.

15 “(B) Subject to paragraph (1), payment shall be made
16 under this title with respect to any services furnished by any
17 such facility to patients who remain in such facility during
18 any period of receivership ordered by the Secretary or the
19 State with respect to such facility.

20 “(C) Public notice shall also be given in any case in
21 which such deficiencies are determined to be rectified.”.

22 (2) Section 1902(a)(31) of such Act (42 U.S.C.
23 1396a(a)(31)) is amended—

24 (A) by striking “and” at the end of subpara-
25 graph (B),

1 (B) by adding “and” at the end of subpara-
2 graph (C), and

3 (3) by adding at the end the following new sub-
4 paragraph:

5 “(D) with respect to a facility which the
6 State or the Secretary determines no longer sub-
7 stantially meets the provisions of section 1861(j),
8 but which has deficiencies that do not immediately
9 jeopardize the health and safety of its patients, for
10 intermediate sanctions pursuant to the criteria de-
11 veloped under section 1866(f)(4);”.

12 (c) EFFECTIVE DATE.—

13 (1) The amendments made by subsection (a) shall
14 become effective one year after the date of the enact-
15 ment of this Act.

16 (2) The Secretary of Health and Human Services
17 shall develop and implement the range of sanctions de-
18 scribed in section 1866(f)(4) of the Social Security Act
19 by not later than one year after the date of the enact-
20 ment of this Act.

21 (2)(A) The amendments made by subsection (b) shall
22 apply (except as provided under subparagraph (B)) to pay-
23 ments under title XIX of the Social Security Act for calendar
24 quarters beginning on or after the first day of the first calen-
25 dar quarter that begins more than one-year after the date of

1 the enactment of this Act, without regard to whether final
 2 regulations to carry out such amendments have been promul-
 3 gated by such date.

4 (B) In the case of a State plan for medical assistance
 5 under title XIX of the Social Security Act which the Secre-
 6 tary of Health and Human Services determines requires
 7 State legislation in order for the plan to meet the additional
 8 requirement imposed by the amendments made by subsection
 9 (c), the State plan shall not be regarded as failing to comply
 10 with the requirements of such title solely on the basis of its
 11 failure to meet the additional requirement before the first day
 12 of the first calendar quarter beginning after the close of the
 13 first regular session of the State legislature that begins after
 14 the date of the enactment of this Act.

15 **SEC. 105. PRIVATE RIGHT OF ACTION AND ACTION FOR CRIMI-**
 16 **NAL NEGLIGENCE.**

17 Title XI of the Social Security Act is amended by in-
 18 serting after section 1129 the following new section:

19 “CAUSES OF ACTION RESPECTING FAILURE OF SKILLED
 20 NURSING FACILITIES AND INTERMEDIATE CARE FA-
 21 CILITIES TO MEET STATUTORY REQUIREMENTS

22 “SEC. 1130. (a) Any individual who—

23 “(1) is entitled to benefits under part A of title
 24 XVIII or under a State plan approved under title XIX
 25 with respect to inpatient services in a skilled nursing

1 facility or intermediate care facility which is required
2 to comply with the requirements of section 1861(j), and
3 “(2) is adversely affected by the failure of a facili-
4 ty to meet such requirements,
5 may bring an action in an appropriate Federal district court
6 to enforce such requirements with respect to the facility.
7 Such action may be brought not later than 180 days after the
8 date of the alleged violation and may be brought without ex-
9 hausting administrative remedies. In such an action the court
10 may award appropriate compensatory and injunctive relief,
11 including actual and punitive damages, attorney fees, and
12 court costs.

13 “(b) Any institution which has an agreement in effect
14 under section 1866 or with a State under title XIX to pro-
15 vide services under title XVIII or XIX as a skilled nursing
16 facility or intermediate care facility and which exercises gross
17 negligence in the care provided to a patient for which pay-
18 ment may be made under either such title shall be fined not
19 to exceed \$200,000 or imprisoned for not more than five
20 years, or both.”.

21 **SEC. 106. EFFECTIVE DATES.**

22 Except as otherwise specified in this title, the amend-
23 ments made by this title shall take effect 90 days after the
24 date of the enactment of this Act.

TITLE II—ADDITIONAL PROVISIONS
RELATING TO LONG-TERM CARE

SEC. 201. ELIMINATION OF POST-HOSPITAL REQUIREMENT
FOR EXTENDED CARE SERVICES.

(a) **ELIMINATION OF 3-DAY RULE.**—(1) Section 1812(a)(2) of the Social Security Act is amended to read as follows:

“(2) extended care services for up to 100 days during any spell of illness;”.

(2) Subsection (i) of section 1861 of such Act is repealed.

(b) **CONFORMING AMENDMENTS.**—(1) Section 1812 of such Act is amended by striking subsection (f), and redesignating subsection (g) as subsection (f).

(2) Sections 1812(b)(2), 1812(e), 1813(a)(3), 1813(b)(2), 1814(a)(6), 1861(v)(1)(G)(i), 1861(v)(2)(A), 1861(v)(3), 1861(y), 1866(b)(3), 1866(d), 1883(d), and 1883(f) of such Act are each amended by striking “post-hospital” each place it appears.

(3) Section 1814(a)(2)(B) of such Act is amended—

(A) by striking “post-hospital”; and

(B) by striking “for any of the conditions” and all that follows, and inserting in lieu thereof a semicolon.

(4) Section 1861(y) of such Act is amended by striking “POST-HOSPITAL” in the heading thereof.

1 (c) **EFFECTIVE DATE.**—The amendments made by this
2 section shall apply to items and services furnished after the
3 date of the enactment of this Act.

4 **SEC. 202. STUDY OF CASE-MIX APPROACH FOR NURSING**
5 **HOMES.**

6 The Secretary of Health and Human Services shall con-
7 duct a study of the feasibility of eliminating separate cate-
8 gories of facilities providing long-term care for purposes of the
9 programs under titles XVIII and XIX of the Social Security
10 Act, and replacing such categories with a single designation
11 of long-term care facility which would provide and be reim-
12 bursed for various levels of long term care. The Secretary
13 shall report the results of the study to the Congress not later
14 than January 1, 1988.

15 **TITLE III—AMENDMENTS TO THE OLDER**
16 **AMERICANS ACT OF 1965**

17 **SEC. 301. OMBUDSMAN PROGRAM.**

18 (a) **AUTHORITY AND IMMUNITY OF OMBUDSMAN.**—

19 (1) **AUTHORITY OF OMBUDSMAN TO DESIGNATE**
20 **REPRESENTATIVES.**—Section 307(a)(12)(B) of the
21 Older Americans Act of 1965 (42 U.S.C.
22 3027(a)(12)(B)) is amended by inserting “, or any indi-
23 vidual designated by the ombudsman to be the repre-
24 sentative of the ombudsman,” after “ombudsman”.

1 (2) IMMUNITY OF OMBUDSMAN AND DESIG-
 2 NEES.—Section 307(a) of the Older Americans Act of
 3 1965 (42 U.S.C. 3027(a)) is amended by adding at the
 4 end thereof the following new subsection:

5 “(g) No ombudsman appointed under subsection (a)(12),
 6 and no individual designated under such subsection by the
 7 ombudsman to be a representative of the ombudsman, shall
 8 be liable under any State or Federal law for carrying out any
 9 function, duty, or activity authorized or required under this
 10 section if such ombudsman or such individual exercises due
 11 care in carrying out such function, duty, or activity.”.

12 (b) TECHNICAL ASSISTANCE AND TRAINING FOR OM-
 13 BUDSMEN AND DESIGNEES.—The Older Americans Act of
 14 1965 (42 U.S.C. 3001 et seq.) is amended by inserting after
 15 section 313 the following new section:

16 “TECHNICAL ASSISTANCE AND TRAINING FOR
 17 OMBUDSMEN

18 “SEC. 314. (a) The Secretary shall provide technical
 19 assistance and training to ombudsmen appointed under sec-
 20 tion 307(a)(12), and to individuals designated under such sec-
 21 tion by ombudsmen to be representatives of such ombudsmen,
 22 in order to enable such ombudsmen and such individuals to
 23 carry out the ombudsman program effectively.

24 “(b) There is authorized to be appropriated to carry out
 25 subsection (a) \$2,000,000 for fiscal year 1987 and
 26 \$1,000,000 for each of the succeeding fiscal years.”.

1 SEC. 302. ESTABLISHMENT OF NATIONAL LONG-TERM CARE

2 OMBUDSMAN PROGRAM ADVISORY COUNCIL.

3 (a) ESTABLISHMENT OF COUNCIL.—There is hereby
4 established in the Department of Health and Human Services
5 the National Long-Term Care Ombudsman Program Adviso-
6 ry Council (hereinafter in this section referred to as the
7 “Council”) which shall advise the Secretary of Health and
8 Human Services with respect to the development, adminis-
9 tration, and priorities of the ombudsman program carried out
10 under the Older Americans Act of 1965 (42 U.S.C. 3001 et
11 seq.).

12 (b) APPOINTMENT OF MEMBERS TO COUNCIL.—The
13 Council shall consist of 9 members who shall be appointed
14 from among individuals described in subsection (c) as follows:

15 (1) APPOINTMENT BY PRESIDENT.—One member
16 shall be appointed by the President.

17 (2) APPOINTMENTS BY SPEAKER OF THE HOUSE
18 OF REPRESENTATIVES.—Four members shall be ap-
19 pointed by the Speaker of the House of Representa-
20 tives.

21 (3) APPOINTMENTS BY THE PRESIDENT PRO
22 TEMPORE OF THE SENATE.—Four members shall be
23 appointed by the President pro tempore of the Senate.

24 (c) INDIVIDUALS ELIGIBLE FOR APPOINTMENT.—Any
25 individual who is—

1 (1) an ombudsman appointed under section
2 307(a)(12) of the Older Americans Act of 1965 (42
3 U.S.C. 3027(a)(12)),

4 (2) a representative of a State or area agency on
5 aging designated under section 305 of such Act,

6 (3) a long-term care provider,

7 (4) a representative of individuals who are resi-
8 dents of long-term care facilities,

9 (5) a representative of a State agency responsible
10 for the certification of long-term care facilities,

11 (6) a health care professional, or

12 (7) a person involved in advocacy with or on
13 behalf of nursing home residents,

14 is eligible to be appointed as a member of the Council.

15 (d) TERM AND CONDITIONS OF SERVICE.

16 (1) TERM OF APPOINTMENT.—Members of the
17 Council shall be appointed for a term of 4 years,
18 except that any member appointed to fill a vacancy oc-
19 curring before the expiration of the term for which his
20 predecessor was appointed shall be appointed only for
21 the remainder of such term.

22 (2) COMPENSATION.—Members of the Council
23 shall serve without compensation.

24 (3) EXPENSES.—While serving away from their
25 homes or regular places of business, on the business of

1 the Council, members of the Council shall be allowed
2 travel expenses, including per diem in lieu of subsist-
3 ence, in the same manner as expenses are authorized
4 by section 5703(b) of title 5, United States Code, for
5 persons in the Government service employed intermit-
6 tently.

7 (e) PERMANENCY OF COUNCIL.—Section 14 of the
8 Federal Advisory Committee Act (5 U.S.C. App.) shall not
9 apply with respect to the Council.

10 **SEC. 303. ANNUAL REPORT TO THE CONGRESS.**

11 Not later than January 15 of each year, the Secretary
12 of Health and Human Services shall submit to the Speaker of
13 the House of Representatives and the President pro tempore
14 of the Senate a report—

15 (1) summarizing and analyzing the data collected
16 under section 307(a)(12)(C) of the Older Americans Act
17 of 1965 (42 U.S.C. 3027(a)(12)(C)) in the then most
18 recently concluded fiscal year,

19 (2) identifying significant problems revealed by
20 such data, and

21 (3) making recommendations regarding appropri-
22 ate legislation to resolve such problems.

23 **SEC. 304. EFFECTIVE DATE.**

24 This title and the amendments made by this title shall
25 take effect October 1, 1986.

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